

**MINUTES
of the
FIFTH MEETING
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**November 20, 2013
Room 321, State Capitol
Santa Fe**

The fifth meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order by Representative Elizabeth "Liz" Thomson, co-chair, on Wednesday, November 20, 2013, at 10:15 a.m. in Room 321 of the State Capitol in Santa Fe.

Present

Sen. Cisco McSorley, Co-Chair
Rep. Elizabeth "Liz" Thomson, Co-Chair
Rep. Gail Chasey

Absent

Sen. John C. Ryan
Sen. John Arthur Smith
Rep. Monica Youngblood

Advisory Members

Rep. Paul C. Bandy*
Rep. Kelly K. Fajardo
Sen. Mary Kay Papen
Sen. Lisa A. Torracio

Sen. Linda M. Lopez
Rep. Jim R. Trujillo

*Representative Bandy was appointed as a voting member to achieve a quorum for this meeting only.

Staff

Shawn Mathis, Staff Attorney, Legislative Council Service (LCS)
Jennifer Dana, LCS
Branden Ibarra, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Wednesday, November 20

Call to Order

Representative Thomson called the meeting to order and welcomed the committee members, staff, presenters and audience members to the meeting. Upon her request, committee members and staff then introduced themselves.

Health Impacts of Electronic Cigarettes

Dr. Dona Upson, Internal Medicine Division of Pulmonary, Critical Care and Sleep Medicine, University of New Mexico, and tobacco dependence specialist with the New Mexico VA Health Care System, spoke to the committee about the health implications for adults and youths of using electronic cigarettes (e-cigarettes), e-cigarette advertising and future regulation of e-cigarettes. Dr. Upson made the following points about research relating to e-cigarettes:

- While there have been few studies on the health impacts of e-cigarette use, data suggest that e-cigarettes have negative short- and long-term implications for lung health and lung function in adults and youths.
- Health risks for youths stem largely from the presence of nicotine and/or other glycol derivatives present in e-cigarette cartridges. Nicotine has a negative impact on adolescent brain development and the development of the fetal brain.
- Some data suggest that e-cigarettes are a "gateway drug" and that many users become dual users of e-cigarettes and conventional cigarettes.
- There are some data demonstrating that e-cigarettes may be effective in reducing conventional cigarette consumption.
- There are no data demonstrating the efficacy of e-cigarettes as a tool to achieve smoking cessation.

Dr. Upson advised that e-cigarettes are not regulated by the federal government and that marketing of e-cigarettes is directed heavily toward youths. Dr. Upson explained how e-cigarette design and advertising target youth audiences:

- e-cigarette flavors include peach, orange, cherry, watermelon, grape and pina colada;
- e-cigarette batteries can be purchased in a variety of colors, patterns and custom designs; and
- e-cigarette video advertisements emphasize the "freedom" associated with smoking e-cigarettes versus smoking conventional cigarettes.

Dr. Upson also provided information on the expansion of the e-cigarette market, including increases in advertising to market e-cigarettes; the percentage of adult smokers trying e-cigarettes for the purpose of smoking cessation; and the e-cigarette sales in key markets.

Dr. Upson told the committee that the future of e-cigarettes is uncertain. There is a need for research and evaluation of the efficacy and health implications of e-cigarettes to determine if they reduce or reinforce smoking behaviors. Dr. Upson, on behalf of the American Thoracic Society, recommended that e-cigarettes be subject to the same regulations as conventional cigarettes.

Members of the committee asked questions about and discussed:

- the addictive nature of e-cigarettes versus conventional cigarettes;
- the use of e-cigarettes for purposes of smoking cessation;
- the presence of carcinogens and other toxins in e-cigarettes;
- the fiscal impact of e-cigarette health-related illnesses to New Mexico;

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- the possibility of collecting excise taxes on sales of e-cigarettes in New Mexico;
- the possibility of tracking sales of e-cigarettes in New Mexico;
- the possibility of imposing age restrictions for purchasing e-cigarettes and related products in New Mexico;
- the anticipated time line for the federal Food and Drug Administration's regulation of e-cigarettes;
- other states and European regulations of e-cigarettes; and
- the cost of e-cigarettes.

American Lung Association Tobacco Report Card

Christian Stumpf, regional government relations director for the American Lung Association (ALA), presented the New Mexico Tobacco Report Card to the committee. Mr. Stumpf discussed the methods behind the grade calculations and illustrated how New Mexico tobacco policies compare with other states. Mr. Stumpf explained that the purpose of the tobacco report card is to convey complicated information in an easy-to-understand format and to assist in advancing tobacco control policy changes.

The ALA grades states in four areas: tobacco prevention and control program funding; smoke-free air laws; cigarette tax; and cessation coverage. Mr. Stumpf reviewed the grades New Mexico received in each of these areas:

- New Mexico received an "F" for tobacco prevention and control program funding; the state would need to allocate an additional \$4 million annually to receive a "D".
- New Mexico received an "A" for smoke-free air laws.
- New Mexico received a "C" for cigarette tax; the state would need to increase cigarette taxes by \$1.32 to receive an "A".
- New Mexico received a "C" for cessation coverage under health insurance policies; it is anticipated that, in 2014, New Mexico will receive a "B" for cessation coverage.

Members of the committee asked questions about and discussed:

- what other states are doing to incentivize insurance companies to provide more cessation assistance;
- past attempts to mandate private insurance coverage for cessation;
- the average number of attempts to quit smoking before successfully quitting;
- progress and barriers toward achieving the goal of ending tobacco use by 2020;
- increasing cigarette taxes; and
- potential ALA policies regarding e-cigarettes and marijuana.

Tobacco Settlement Permanent and Program Funds; Revenue Projections

Greg Geisler, analyst for the Legislative Finance Committee (LFC), informed TSROC members of the LFC's fiscal year (FY) 2015 revenue projections for the Tobacco Settlement Program Fund and of agency appropriation requests for FY 2015. Mr. Geisler stated that the FY 2015 current revenue projection is for revenue to remain flat at approximately \$39.5 million. He added that it is too early to tell if the FY 2015 Master Settlement Agreement (MSA) distribution

will be affected by another arbitration panel decision. Mr. Geisler advised the committee that, given the uncertainty over the size of future distributions, it would be prudent to not appropriate funds for programs beyond the 50% level specified in statute.

Mr. Geisler informed the committee that FY 2015 agency appropriation requests total approximately \$19.2 million. The largest agency requests are from the Human Services Department (\$9.2 million) and the Department of Health (\$6.8 million). Please refer to the handout marked as agenda item three to view specific FY 2015 agency appropriation requests.

Members of the committee asked questions about and discussed:

- the difficulty of appropriating funds not yet received;
- the time line for the distribution of funds allocated in 2013 to the Children, Youth and Families Department's early childhood programs and to the lottery scholarship program; and
- recommending appropriations based on a percentage or set dollar amount.

Proposed Legislation from the Attorney General for the 2014 Legislative Session

Ari Biernoff, assistant attorney general of the Litigation Division in the Office of the Attorney General (OAG), told the committee that he did not have any draft legislation from the OAG to present to the committee for endorsement at the time of his presentation. Mr. Biernoff stated that he would instead be providing an update on the actions taken by the OAG in response to the MSA arbitration panel's decision made in September 2013. Mr. Biernoff explained that, as a result of the decision, New Mexico will see a reduction in its annual payment. He told the committee that there are few avenues to challenge the arbitration decision, but the OAG has filed a proceeding to challenge the way the amount of the penalty is calculated and is seeking to reduce the penalty. If the OAG is successful in challenging the amount of the penalty, Mr. Biernoff estimates that the April 2014 payment from the participating manufacturers would be reduced by approximately \$12 million. If the OAG is unsuccessful, Mr. Biernoff estimates that the amount of the annual payment will be reduced by approximately \$24 million.

Members of the committee asked questions about and discussed:

- the history of arbitration between New Mexico and tobacco companies;
- New Mexico's 2003 compliance rate;
- lawsuits filed against noncompliant nonparticipating manufacturers;
- other states' appeals of the arbitration panel's decision;
- the possibility of New Mexico appealing the arbitration panel's decision;
- the possibility of creating a working group consisting of representatives from the OAG, the Taxation and Revenue Department (TRD) and the legislature to better understand the reasoning behind the arbitration panel's decision and to strategize ways to secure positive future arbitration decisions; and
- the roles and respective responsibilities of the OAG, the TRD and the legislature in securing positive future arbitration decisions.

Committee Legislation

Ms. Mathis presented three discussion drafts of bills to the committee for endorsement. Two of the bills relate to banning the sale of e-cigarettes to minors, and the third relates to the registration of sellers of e-cigarettes and retention of sales records. Please refer to the handout marked as agenda item seven to view the discussion drafts of the bills.

The committee voted unanimously to endorse a bill banning the sale of e-cigarettes to minors, with specific instructions to committee staff to add certain language.

Members of the committee asked questions about and discussed:

- expanding the definition of e-cigarettes;
- internet sales of e-cigarettes;
- the sovereignty of tribes with respect to e-cigarette legislation; and
- requesting an executive message from the governor to consider e-cigarette legislation during the 2014 legislative session.

Review of FY 2014 Program Funding Levels and FY 2015 Funding Recommendations

Ms. Mathis directed the committee members' attention to the Tobacco Settlement Program Fund appropriations requests table in their committee folders. Please refer to the handout marked as agenda item eight to view agency appropriations requests.

A motion was made, seconded and unanimously approved to recommend flat funding appropriations for FY 2015.

Approval of Minutes of October 30, 2013 Meeting

A motion was made and seconded, and the minutes of the October 30, 2013 meeting were unanimously approved.

Adjournment

There being no further business before the committee, the fifth meeting of the TSROC for the 2013 interim adjourned at 3:50 p.m.